

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
HELENA DIVISION

|                                 |   |                          |
|---------------------------------|---|--------------------------|
| KEITH A. BROWN,                 | ) | Cause No. CV 04-34-H-DWM |
|                                 | ) |                          |
| Plaintiff,                      | ) |                          |
|                                 | ) |                          |
| vs.                             | ) | ORDER                    |
|                                 | ) |                          |
| DIANE L. KOCH and ROSS SWANSON, | ) |                          |
|                                 | ) |                          |
| Defendants.                     | ) |                          |
|                                 | ) |                          |

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United States Magistrate Judge Carolyn S. Ostby entered Findings and Recommendation in this matter on August 9, 2005. Keith A. Brown did not file objections and is therefore not entitled to de novo review of the record. 28 U.S.C. § 636(b) (1). This Court will review the Findings and Recommendation for clear error. McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc., 656 F.2d 1309, 1313 (9th Cir. 1981). Clear error exists if the Court is left with a "definite and firm conviction that a mistake has been committed." United States v. Syrax, 235 F.3d 422, 427 (9th Cir. 2000).

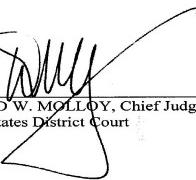
After a preliminary screening of Brown's Complaint filed pursuant to 42 U.S.C. § 1983, Judge Ostby concluded that the Defendant Ross Swanson should be dismissed because Brown's

Complaint fails to state a claim against him for retaliation. Judge Ostby took judicial notice that CV 01-19-M-CSO was dismissed because Brown failed to conduct discovery. Brown now contends the case was dismissed because he was denied access to legal resources and that Defendant Ross Swanson carried out Defendant Koch's order to deny him that access and caused his case to be dismissed. Because the objective facts as noticed by this Court show no causal connection between Swanson's actions and the dismissal of CV 01-19-M-CSO, the sole basis upon which Brown claims Swanson is liable, Judge Ostby recommends that Defendant Swanson be dismissed from this case.

I find no clear error in Judge Ostby's Findings and Recommendation and I adopt them in full. IT IS THEREFORE HEREBY ORDERED that:

1. Judge Ostby's Findings and Recommendation (dkt #11) are adopted in full.
2. Defendant Ross Swanson is DISMISSED from this case.
3. Brown's requests for reopening of CV 01-19-M-CSO and CV 02-102-M-DWM and his request for declaratory judgment on the constitutionality of the policy prohibiting inmate-to-inmate legal assistance are DENIED.

DATED this 9<sup>th</sup> day of August, 2006.



DONALD W. MOLLOY, Chief Judge  
United States District Court